



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1992

Ms. Annette Jones
Police Legal Advisor
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR92-590

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17526.

The Waco Police Department received an open records request for the narrative report in Case No. 89-060232. You seek to withhold portions of that report based on section 3(a)(1) of the Open Records Act, which excepts from required disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision."

You assert that section 3(a)(1) applies to portions of the report based on the common-law right to privacy. Information may be withheld from public disclosure on common-law privacy grounds only if it meets two requirements: 1) it contains highly intimate or embarrassing facts about a person's private affairs, such that its publication would be highly objectionable to a person of ordinary sensibilities, and 2) it is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert denied*, 430 U. S. 931 (1977). We agree that the husband in this case has a right to privacy with regard to any information in the report about his marriage. However, we disagree with your markings, in that some of the information you marked is not information about the marriage. We have marked the report accordingly.

You also assert that a portion of the report which reveals that the person involved was taking certain prescription drugs and the name of the doctor who prescribed them is made confidential by section 5.08 of the Medical Practice Act, V.T.C.S. article 4495b or by the physician's common-law privacy rights. We disagree.

We do not think that the fact that this physician was treating this individual or that he had prescribed drugs as a part of her treatment is a highly intimate or embarrassing fact

about the private affairs of the physician. These facts are private as to the individual involved, whose common-law privacy rights ceased at the time of her death. *See* Attorney General Opinion JM-229 (1984) at 3.

The confidentiality accorded medical information by the Medical Practice Act does not lapse upon the death of the patient. *Id.* at 4. Section 5.08 states in part

(a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.¹ (Footnote added.)

Thus, section 5.08 makes confidential two kinds of information: 1) communications between a physician and a patient; and 2) medical records created or maintained by a physician. The information at issue here, appearing as it does on a police officer's narrative report, is clearly not part of a medical record created or maintained by a physician. *See* Open Records Decision No. 343 (1982) (medical record under Medical Practice Act must actually be prepared or maintained by a physician). Nor is the information a physician-patient communication. The reporting officer apparently recorded the information from the medication bottles he found on the kitchen table.

Nor do other provisions in the Medical Practice Act make this information confidential. Section 5.08(c) states

Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf² may not disclose the information except to the extent

¹Subsection (g) of section 5.08 of the Medical Practice Act lists eight exceptions relating to court or administrative proceedings. Subsection (h) lists eight other kinds of exceptions. None of these exceptions apply in this case.

²Number (5) of subsection (h) permits a physician to disclose confidential information to "any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information" This is not a situation in which a physician released confidential medical records following the consent of the patient or of someone authorized to act on the patient's behalf. Where a patient or someone acting for a patient consents to the release of information made confidential by the Medical Practice Act, a person who receives such information may disclose it to others only to the extent consistent with the authorized purposes for which consent to release of the information was obtained. *See* V.T.C.S. art. 4495b, § 5.08(j)(3).

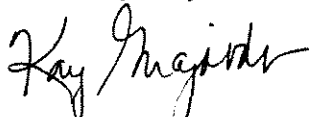
that disclosure is consistent with the authorized purposes for which the information was first obtained. (Footnote added.)

The information on the report was taken from information on the medication bottles, which in turn was taken from prescriptions prepared by a physician. The issue, therefore, is whether the officer received the information from a confidential communication or record.

A prescription, signed by a physician, is a record of the treatment of a patient for purposes of section 5.08(b). In contrast, the medication bottle is not a confidential medical record; it was neither created nor maintained by a physician. *See id.* Thus, since the officer obtained the information from the medication bottle, which is not a confidential medical record, section 5.08(c) does not apply in this case. We therefore conclude that the information about the deceased's medication is not deemed confidential by section 5.08 of the Medical Practice Act. You must release the information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

Ref.: ID# 17526

cc: Mr. John L. McLemore
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